IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 5247 OF 1994

Ganpat Dharma Mhadse .. Petitioner

Vs.

The Commissioner,
The Municipal Corporation of
the City of Thane and ors. .. Respondents

Mr. R.S. Datar for petitioner.
Mr. P.M. Pradhan for respondent no.1.
Mr. V.S. Gokhale, AGP for respondent no.3-State.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : May 02, 2006.

P.C.:

1. Original Plot No.451-A forming part of Survey No.329, Hissa No.6 (Part) admeasuring about 555 sq.yrds. and situated at village Panchpakhadi, Thane (West) belongs to the petitioner and has been encroached upon. The respondent - corporation, in the scheme of rehabilitation, has offered final Plot No.316 under the Town Planning Scheme, Thane No.1 to the petitioner in lieu of the original Plot No.451-A which the petitioner claims to be in possession. In this petition filed under Article 226 of the Constitution, the petitioner has prayed for directions against the Corporation to hand over final plot no.316 to him.

2. It has been pointed out by Mr. Pradhan, the learned counsel for the respondent-corporation that not only original plot no.451-A but in deed even final plot no.316 of the Town Planning Scheme, Thane No.1 has been under encroachment and, therefore, the Corporation is not in a position to hand over the said plot inspite of its willingness and desire to do so.

3. Mr. Pradhan also states that by following the directions issued by the Apex Court, the respondent-corporation has submitted a scheme to the Divisional Commissioner, Konkan Region for arbitration aimed at rehabilitation of the encroachers and once that proceeding is decided by the Divisional Commissioner, the Corporation is ready and willing to take steps to get both the plots clear from encroachment and during the pendency of the said proceedings it is not possible to shift encroachers from either of the plots. Mr. Pradhan, therefore, suggests that the best course would be for the Divisional Commissioner, Konkan Region to dispose off the pending arbitration proceedings which are submitted pursuant to the directions of the Apex Court in the matter of S.J. Kelkar and Company.

4. We, therefore, direct the Divisional

Commissioner, Konkan Region to expedite his decision in the arbitration proceedings initiated by the respondent-corporation and presently pending before him in the case of S.J. Kelkar and Company and pass order as per law as expeditiously as possible and preferably by 31st October, 2006. The interim protection granted by this court in favour of the petitioner vide order dated 15/3/1995 shall continue to operate till the pending arbitration proceedings are decided or till the corporation hands over the final plot no.316 to the petitioner whichever is later. Disposal of this petition has not taken away any of the parties rights.

5. Petition stands disposed off accordingly.

Rule discharged. No costs. Writ to go forthwith.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**